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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,368

12/04/2003

Patricia Carlson

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01/10/2006

Intellectual Property Department  
DEWITT ROSS & STEVENS S.C.  
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Madison, WI 53717-1914

EXAMINER

WARREN, DAVID S

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/727,368

Applicant(s)

CARLSON, PATRICIA

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 5-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

*As stated in the previous Office Action (July 21, 2005):*

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5 – 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine (The Jazz Theory Book, 1995). Regarding independent claim 5, Levine discloses the use of assigning sequential numeric designations (i.e., 1, 2, 3, 4, etc.) to the tones of the Ionian mode (figs. 2-17), and assigning numeric designations (I, II, III, IV, etc. are synonymous with 1, 2, 3, 4, etc., respectively) to three-note clusters (fig. 6-53; these three note clusters are identical to what are termed “triads” or “chords”). The “I chord” comprises the notes 1, 3, and 5 of the Ionian mode; the “II chord” (a minor chord) comprises the notes 2, 4, and 6 of the Ionian mode; the “III chord” comprises the notes 3, 5, and 7 of the Ionian mode; etc. Levine discloses modeling Thelonious Monk’s well-known jazz classic from the 1950’s ‘Round Midnight (i.e., a pre-existing musical passage). Finally, Levine’s book provides the model to a student via visual means. The limitations of claims 6 and 7, are addressed supra. Regarding claim 8, the Ionian

mode (as taught by Levine) is identical to the tones do, re, mi, fa, so, la, and ti. The limitations of claim 9 are discussed supra.

### ***Drawings***

The Applicant's traverse of the Objection to the drawings is persuasive. The objection is hereby withdrawn.

### ***Response to Arguments***

Applicant's arguments filed October 24, 2005, have been fully considered but they are not persuasive. The Applicant argues that "the tone designations and the chord designations **do not** shift or change as the musical passage is modeled." Levine shows numbering the notes of a scale and the harmonized chords of that scale (fig. 6-53). The Examiner does not see any limitation in the claims requiring chord designation that **do not** shift. Indeed, it can be seen that the II chord (e.g., in the key of C) is composed of notes D, F, and A, which are 2, 4, and 6 as numbered by Levine. The Examiner concurs that Levine **also** shows that the II chord has its own numbering scheme. However, as claimed, the numbering of tones and chords by Levine anticipates Applicant's invention. To clarify the Examiner's position, this argument can be represented as follows: The Applicant is claiming "A" and Levine teaches "A" and "B." Thus, Levine anticipates Applicant's invention. The Applicant also argues "[t]he

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designations are required by the language of the claims to be sequential and to represent correspondingly sequential musical intervals.” The Examiner concurs, however, this is taught by Levine.

The Applicant asserts that Levine (and conventional music) provides a constantly shifting numerical frame of reference. The Examiner concurs. But Levine also shows sequential numbering of notes of a scale and sequential numbering of chords belonging to that scale (figs. 2-17, 6-53). The Examiner maintains that a user of the Levine book, given the notes of a scale, would be able to construct a chord using the 2, 4, and 6 scale degrees.

The Applicant argues that beginners (and pros) would be confused by Levine’s technique (Why is C the “7” in one chord and not in another?). As stated supra, the Examiner’s position is that Levine does both (a) sequentially number a scale and corresponding chords and (b) shift the scale numbers according to different chords. However, as understood by the Examiner, the Applicant’s claims are drawn to only (a). From the Examiner’s point, it is ancillary that Levine also shifts the numbering. The Examiner also would like to point out that the Applicant states that (for the Applicant’s invention) “the music vocabulary is the same in every key.” While this is true, the Applicant’s numbering scheme is shifted for each new key. A beginner may ask, Why is C “2” in this key but “1” in this key?

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

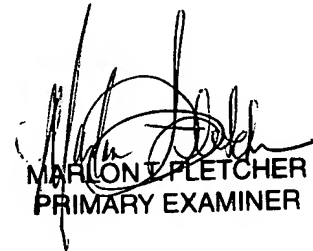
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2800 ext 37. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw



MARLON T. FLETCHER  
PRIMARY EXAMINER